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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

the application of:

Roger E. TULLY

Serial Number: 09/106,172

Group Art Unit: not assigned

Filed: June 26, 1998

Examiner: not assigned

For: ORAL LIQUID MEDICINE SOLUTION

PETITION UNDER 37 CFR \$1.53(e)(2)

Assistant Commissioner of Patents  
Office of Petitions  
Washington, D.C. 20231

September 21, 1998

Sir:

In response to the Notice of Incomplete Application dated July 20, 1998, Applicant respectfully petitions for the original filing date of June 26, 1998. The application is complete as filed.

Enclosed herewith is a copy of the application as filed on June 26, 1998, containing the specification, claims, and abstract (9 pp.). The undersigned personally logged the filing of this application into the office daily log book (which is a business record of each paper filed with the United States Patent and Trademark Office). A copy of the page of the log book for June 26, 1998, is also enclosed. This page indicates the papers filed with the Tully application, particularly the 9 pages of specification/claims.

It is the undersigned's practice as well to personally count the pages of a new application being filed before it is put into

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231 on 9/21/98  
Date Of Deposit

(09/106,172)

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Mary E. Gormley  
Registration No. 34,409

Mary E. Gormley 9/21/98  
Signature Date

the envelope for mailing to the PTO. This was performed by the undersigned with this application, to the satisfaction that there were nine pages of specification/claims.

The return receipt postcard also contained the information that 9 pages of specification and claims were attached. A copy of this postcard is enclosed.

It was indicated on the postcard, "The PTO did not receive the following listed item(s) (handwritten) specification and claims (9 pages)." The undersigned contacted the Initial Patent Examination Division several times between receiving the postcard and receipt of the Notice of Incomplete Application. The issue was not solved at during this time period because the file could not be located. The clerk, however, did indicate that the division had been having problems with incoming papers getting separated and lost, due to the fact that the work was contracted out to untrained personnel.

This is the first time the undersigned has had this happen in an application. However, within the past month another case of missing specification and claims came to light. In US Serial No. 09/126,371, the undersigned filed a petition requesting that an application filed under Rule 53(b) based on prior application No. 08/338,057, be accorded a filing date of December 8, 1997 (apparently the Initial Examination Division misconstrued it as a filing under Rule 53(d)). The decision granting the petition indicated, *inter alia*, that a copy of the application submitted on July 24, 1998, would be used to process the application. Thus, it appears that the PTO lost the specification and claims for the '057 case as well. It is believed that such is a further indication that the specification and claims were submitted in the instant application by the undersigned, but were misplaced by the PTO.


It is assumed that the PTO did receive the Preliminary Amendment, which was filed along with the application papers on June 26, 1998.

Finally, Applicant also encloses a copy of the Express Mail receipt, which indicates a "date-in" of June 26, 1998.

The fee of One Hundred Thirty dollars (\$130.00) under Section 1.17(i) may be charged to Deposit Account No. 02-2334, along with any deficiencies. Applicant also requests a refund of the petition fee, because it is Applicant's position that the application is complete as filed.

Favorable action is earnestly requested.

Respectfully submitted,

  
Mary E. Gormley  
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Enclosures: Copy of Specification/Claims/Abstract  
Copy of Log Book Page  
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Attorney Docket O/97293 US

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